

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF OHIO
3 AT DAYTON

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5 UNITED STATES OF AMERICA,)
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10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE **THOMAS M. ROSE**,
12 UNITED STATES DISTRICT JUDGE, PRESIDING
13 THURSDAY, FEBRUARY 6, 2020
14 DAYTON, OH

15 **APPEARANCES:**

16 **For the Plaintiff:** **BRENT TABACCHI, ESQ.**
17 U.S. Attorney's Office
18 200 W. Second Street
19 Room 602
20 Dayton, OH 45402

21 **For the Defendant:** **ANTHONY R. CICERO, ESQ.**
22 Attorney at Law
23 500 East Fifth Street
24 Dayton, OH 45402

25 Proceedings recorded by mechanical stenography,
26 transcript produced by computer.

27 **Mary A. Schweinhagen, RDR, CRR**
28 Federal Official Court Reporter
29 200 West Second Street
30 Dayton, OH 45402
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01:58:59 1 P-R-O-C-E-E-D-I-N-G-S 1:59 P.M.

01:58:59 2 THE COURT: We're before the Court this afternoon in

01:59:03 3 the matter of the United States of America versus Brian

01:59:06 4 Higgins. This is Case Number 3-18-cr-186. And this matter

01:59:13 5 was previously set for a final pretrial. It's my

01:59:17 6 understanding, however, that there is a motion at this time to

01:59:21 7 be made before the Court.

01:59:24 8 Counsel -- first, let me have counsel enter their

01:59:27 9 appearance, please.

01:59:28 10 MR. TABACCHI: Good afternoon, Your Honor. Brent

01:59:30 11 Tabacchi on behalf of the United States.

01:59:31 12 MR. CICERO: Tony Cicero on behalf of Brian Higgins.

01:59:34 13 THE COURT: All right. Mr. Cicero.

01:59:36 14 MR. CICERO: As we discussed in chambers, Your

01:59:38 15 Honor, at this time we would move to continue this matter. I

01:59:40 16 will follow that up with a written motion that details a lot

01:59:45 17 of what we discussed in chambers and have that signed by my

01:59:48 18 client as well and file that on the Court's docket.

01:59:52 19 THE COURT: And I'm assuming, as indicated in

01:59:55 20 chambers, that the purpose for -- broadly or generally the

02:00:01 21 purpose for the continuance is the necessity of receiving,

02:00:06 22 analyzing, and making some determination with regard to the

02:00:09 23 discovery; is that right?

02:00:10 24 MR. CICERO: That's absolutely correct, Your Honor.

02:00:14 25 THE COURT: And, Mr. Cicero, you have talked with

02:00:18 1 Mr. Higgins. Mr. Higgins understands that this motion does
02:00:23 2 waive or gives up or tolls any and all time requirements that
02:00:31 3 are a requirement of this Court or the government to try
02:00:34 4 Mr. Higgins within a certain period of time; namely, his
02:00:37 5 speedy trial rights?

02:00:38 6 MR. CICERO: He understands that, Judge.

02:00:40 7 THE COURT: And he still wishes the Court to grant
02:00:42 8 the continuance?

02:00:42 9 MR. CICERO: That's correct.

02:00:43 10 THE COURT: How about that, Mr. Higgins?

02:00:45 11 THE DEFENDANT: Yes, Your Honor.

02:00:45 12 THE COURT: You understand that everybody's entitled
02:00:49 13 to be tried within a certain period of time, and that clock
02:00:51 14 runs. One of the things that can stop that clock from running
02:00:57 15 is a motion by the defendant to continue the matter.

02:01:00 16 THE DEFENDANT: Yes, Your Honor.

02:01:01 17 THE COURT: And if that matter is -- if I grant a
02:01:03 18 motion to continue, from the date of the motion, which would
02:01:06 19 be here today, because I'm first hearing of this by oral
02:01:11 20 motion to be followed by a memorialization of that motion in
02:01:15 21 writing and filed, but from today until the new trial date
02:01:21 22 there would be no time counted against the government nor the
02:01:25 23 Court with regard to any obligation to try you within a
02:01:28 24 certain period of time.

02:01:29 25 THE DEFENDANT: Understood.

02:01:30 1 THE COURT: Understanding that, do you want the
02:01:32 2 Court to grant the continuance?
02:01:34 3 THE DEFENDANT: Yes, Your Honor.
02:01:34 4 THE COURT: And you understand that that continuance
02:01:38 5 would most likely be a considerable continuance? It would
02:01:43 6 probably extend into the mid year.
02:01:45 7 THE DEFENDANT: Yes, Your Honor.
02:01:46 8 THE COURT: Thank you. You can have a seat.
02:01:48 9 Any objection from the government?
02:01:49 10 MR. TABACCHI: No, Your Honor.
02:01:50 11 THE COURT: Well, the Court finds that based upon
02:01:54 12 the presentation of counsel, based upon my understanding of
02:01:59 13 the motion that will be filed with the Court, there is a
02:02:04 14 necessity in this particular case to allow further discovery,
02:02:10 15 analysis, and preparation, and that the discovery is somewhat
02:02:17 16 complex and additional time is needed to examine the discovery
02:02:22 17 and analyze it and make a determination as to how to proceed.
02:02:26 18 The Court further finds that failure to grant the
02:02:30 19 continuance as prayed for by Mr. Higgins through counsel would
02:02:35 20 result in a miscarriage of justice and would deny counsel for
02:02:39 21 the defendant reasonable time necessary for effective
02:02:42 22 preparation.
02:02:43 23 So, therefore, within the factual and legal confines of
02:02:47 24 this cause, the Court does find that the ends of justice in
02:02:55 25 granting this motion outweighs the best interests of the

02:02:58 1 public and the defendant in a speedy trial. So, therefore,
02:03:01 2 the Court is going to continue the matter from the previously
02:03:03 3 set trial date, I believe it's February the 18th of 2020, and
02:03:18 4 is reset for July the 27th, 2020, at 9 o'clock. This will
02:03:24 5 toll any and all speedy trial from today until the July 27,
02:03:29 6 2020, trial date.

02:03:31 7 The Court would not anticipate any reason at this point
02:03:36 8 in time that would require this Court to continue this matter
02:03:40 9 any further. This should give everybody an ample opportunity
02:03:44 10 to do what they need to do and to be prepared to go to trial.

02:03:48 11 Final pretrial will then be set for July the 14th, 2020,
02:03:53 12 at 2:30.

02:03:54 13 Anything further to come before the Court?

02:03:58 14 MR. TABACCHI: No, Your Honor.

02:03:59 15 MR. CICERO: Nothing else, Judge.

02:04:12 16 THE COURT: Thank you very much.

02:04:13 17 THE COURTROOM DEPUTY: All rise. This court stands
02:04:15 18 in recess.

02:04:16 19 (Proceedings concluded at 2:04 p.m.)

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1 CERTIFICATE OF REPORTER
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3 I, Mary A. Schweinhagen, Federal Official Realtime
4 Court Reporter, in and for the United States District Court
5 for the Southern District of Ohio, do hereby certify that
6 pursuant to Section 753, Title 28, United States Code that the
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12
13 s/Mary A. Schweinhagen

14 _____ October 9, 2020

15 MARY A. SCHWEINHAGEN, RDR, CRR
16 FEDERAL OFFICIAL COURT REPORTER
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